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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

(DIVISION BENCH)

CORAM : Hon'ble Shri S.R. Nayak, CJ
Hon'ble Shri Satish K. Agnihotri, J.

Misc. Appeal No.575 OF 2005

APPELLANTS

1. Lallan Prasad Choudhary, S/o Shri Ganesh Prasad Choudhari (wrongly typed as Youdhari), aged about 52 years, occupation - Service, resident of Chhirrapara, Near Danteshwari Temple, Bhathagaon, P.S. Purani Basti, Post Sundernagar, Raipur, Tahsil and District Raipur (CG)

2. Smt. Vimla Devi Choudhary, aged about 46 yars, wife of Shri Lallan Prasad Choudhari, occupation - NIL, resident of Chhirrapara, Bhathagaon, P.S. Purani Basti, Raipur, Tahsil and Distt. Raipur (CG)

Versus

RESPONDENTS

1. Raja Prasad Pandey, aged about 35 years, son of Shri Ramanuj Pandey, Driver of Truck No. CG 08/ZC 0806, resident of Bhathagaon, P.S. Purani Basti, Near Ganga Steel, Raipur (CG)

2. Vedprakash Mishra, son of Shri Sadanand Mishra, Truck owner, No. CG 08/ZC 0806, Palgudaru Tansport, Tatibandh, P.S. Aamanaka, Raipur, Tahsil and Distt. Raipur (CG)

3. The New India Insurance Company, Raipur, Policy No. 510500 / 31 / 02 / 03749 (Period up to 7.11.2003)

Present:
Mr. P. P Sahu learned counsel for the appellants.

ORAL ORDER
(Passed on 1st of December 2005)

The following Order of the Court was passed by

S.R. Nayak, CJ:

This is a claimants' appeal. While assailing the impugned award, it was contended that the deceased was earning roughly Rs. 5,000/- in a month by doing repairs of electrical installations because he had acquired skill in that avocation. There is absolutely no substantive legal evidence to support the above claim except self-serving testimony of the father of the deceased. Even the father of the deceased in his deposition, as pointed out by the Tribunal in the award, has admitted that the deceased was earning Rs. 30/- per day and that he was also earning Rs.2,000/- monthly doing electrical works. In the absence of acceptable substantive legal evidence, we cannot take any exception to the Tribunal in taking the income of the deceased at the notional rate for the purpose of assessing loss of dependency. However, further it was contended that the Tribunal is not justified in not awarding any compensation towards loss of estate. It is true that in a death case, the claimants are also entitled to compensation under the conventional head of 'loss to estate'. But here is a case where the Tribunal has awarded interest at the rate of 9%. Having regard to the steep fall in the interest rate in recent times at the national level and the international level, we should say that the rate of interest

awarded by the Tribunal is on higher side. The deficiency of the compensation on account of not awarding the compensation under the conventional head 'loss of estate' is made good by awarding higher rate of interest. Therefore, we are of the considered opinion that what has been awarded in the facts and circumstances of the case and evidence on record is a just and reasonable compensation within the contemplation of Motor Vehicles Act, 1988. There is no warrant for our interference. The appeal is, therefore, dismissed.

Sd/-
Chief Justice
Judge

Sd/-
Satish K. Agnihotri
Judge

Brajesh